

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON MICHAEL SEYMOUR,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,<sup>1</sup>

Defendant.

No. 1:21-cv-00619-ADA-BAM

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(ECF Nos. 10, 21, 23)

Plaintiff Jon Michael Seymour (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits under Title II of the Social Security Act.

On May 10, 2023, the assigned Magistrate Judge issued findings and recommendations recommending that Plaintiff’s appeal from the administrative decision of the Commissioner be denied, and that the Commissioner’s determination be affirmed. (ECF No. 23.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen days after service. (*Id.* at 11.) Plaintiff filed objections on May 24, 2023. (ECF No. 24.) The Commissioner did not respond to the objections.

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew Saul as the defendant in this suit.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c), this Court has conducted a  
2 *de novo* review of the case, including Plaintiff's objections. Having carefully reviewed the entire  
3 file, the Court finds that the findings and recommendations are supported by the record and proper  
4 analysis. The Court has considered Plaintiff's objections but finds no basis to reject the Magistrate  
5 Judge's findings and recommendations.

6 First, Plaintiff objects to the Magistrate Judge's finding that the ALJ properly evaluated  
7 Plaintiff's subjective complaints. (ECF No. 24 at 1-3.) Plaintiff argues that the ALJ's finding that  
8 Plaintiff can stand and walk for four hours out of an eight-hour workday does not reflect his  
9 testimony that he spends 85-90% of his day reclining. (*Id.* at 2.) The Court does not find this  
10 reasoning persuasive because the vocational expert's objective medical evidence contradicts  
11 Plaintiff's testimony. (*See* ECF No. 23 at 3.) The vocational expert, providing an impartial and  
12 neutral opinion, concluded that based on Plaintiff's age, education, and past jobs, he may perform  
13 a reduced range of light work because he could stand or walk up to four hours out of an eight-hour  
14 workday. (ECF No. 13-1 ("Administrative Record" or "AR") at 60-62.) Plaintiff argues that the  
15 Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely  
16 because they are unsupported by objective medical evidence. (ECF No. 24 at 2.) Although lack of  
17 supporting medical evidence cannot form the sole basis for discounting testimony, it may still be a  
18 factor that the ALJ can consider. *See Burch v. Burnhart*, 400 F.3d 676, 680 (9th Cir. 2005). An  
19 example of the ALJ considering Plaintiff's subjective complaints is reflected in the determination  
20 of Plaintiff's residual functional capacity ("RFC"). The ALJ explained that exertional and postural  
21 restrictions were incorporated in the RFC to accommodate the claimant's obesity, "and his alleged  
22 pain, including pain from degenerative disc disease of the cervical, thoracic, and lumbar spine."  
23 (AR at 27.) The ALJ further explained that "based on claimant's reported intolerance of prolonged  
24 standing or walking," Plaintiff was limited to standing and/or walking for a total of four hours in  
25 an eight-hour workday. (*Id.*) Therefore, the Court adopts the Magistrate Judge's finding that the  
26 ALJ properly evaluated Plaintiff's subjective complaints.

27 Second, Plaintiff objects to the Magistrate Judge's determination based on the ALJ's five-  
28 step evaluation. (ECF No. 24 at 3-6.) Plaintiff argues that the ALJ failed to provide a reasonable

1 explanation as to how Plaintiff can still perform “light” work jobs despite his limitations to  
2 “sedentary” work jobs. (*Id.* at 4.) The ALJ consulted the vocational expert to determine whether  
3 jobs exist in the national economy for an individual with Plaintiff’s age, education, work  
4 experience, and RFC. (AR at 32.) The vocational expert testified that Plaintiff would be able to  
5 perform the occupations of information clerk, electronics worker, and bench assembler. (*Id.*)  
6 Although Plaintiff argues that the ALJ may not rely on the vocational expert’s professional  
7 experience, an ALJ may consult with a vocational expert when a claimant’s residual functional  
8 capacity is between categories. *See Moore v. Apfel*, 216 F.3d 864, 870 (9th Cir. 2000). Therefore,  
9 the Court adopts the Magistrate Judge’s determination on the fifth step of the five-step evaluation  
10 for disability.

11 Accordingly,

- 12 1. The findings and recommendations issued on May 10, 2023, (ECF No. 23), are  
13 adopted in full;
- 14 2. Plaintiff’s appeal from the administrative decision of the Commissioner of Social  
15 Security is denied and the Commissioner’s determination to deny benefits is  
16 affirmed; and
- 17 3. The Clerk of this Court is directed to enter judgment in favor of Defendant Kilolo  
18 Kijakazi, Acting Commissioner of Social Security, and against Plaintiff Jon Michael  
19 Seymour.

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22 IT IS SO ORDERED.

23 Dated: September 7, 2023

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UNITED STATES DISTRICT JUDGE